

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
EMERY LEON MITCHEM, JR.,

Plaintiff,

-v-

NEW YORK UNIVERSITY et al.,

Defendants.
-----X

23-CV-7320 (JMF)

ORDER

JESSE M. FURMAN, United States District Judge:


On November 27, 2023, the Court issued an Order to Show Cause requiring that “Plaintiff communicate with the Court, in writing, as to why Plaintiff has failed to [timely] serve the summons and Complaint . . . or, if Plaintiff believes that the Defendants have been served, when and in what manner such service was made.” ECF No. 7. The Court set a deadline of December 11, 2023, for such communication, and instructed Plaintiff to serve Defendant’s attorneys with a copy of that Order, and to file proof of such notice by December 4, 2023. *Id.* On December 4, Plaintiff filed proof of service of not only the Order, but also the summons and Complaint, indicating that service was effectuated that same day. *See* ECF No. 8-1. Accordingly, in light of the presumption in favor of resolving cases on the merits, the Court granted Plaintiff an extension of time to serve, *nunc pro tunc*, and deemed service timely, thereby effectively setting aside the Court’s Order to Show Cause. ECF No. 9. On December 11, 2023, Plaintiff filed motions to set aside the Order to Show Cause as well as the Court’s order deeming service timely as of December 4, asserting that service had in fact been effectuated on October 11, 2023, and attaching proof of service. ECF Nos. 10-11.

Given that the Court has already deemed service timely, the only import of these motions is in determining — based on when service was effectuated — when Defendants’ response to the Complaint was or is due. Given the totality of the circumstances, including that the proof of service dated October 11, 2023 indicates only that Defendant New York University was served at its “usual place of abode” without detailing how or why that manner of service upon a university was appropriate, the Court deems service to have been made on December 4, 2023, for purposes of Defendants’ response deadline, again without prejudice to Defendants arguing that service was improper.

The Clerk of Court is directed to terminate ECF Nos. 10-11.

SO ORDERED.

Dated: December 12, 2023
New York, New York


JESSE M. FURMAN
United States District Judge